



DEPARTMENT OF THE NAVY

OFFICE OF THE SECRETARY

WASHINGTON, D.C. 20350-1000

SECNAVINST 12700.2A
OGC

31 October 2000

From: Secretary of the Navy
To: All Ships and Stations

Subj: COOPERATION WITH THE OFFICE OF SPECIAL COUNSEL

Ref: (a) DoD Instruction 5500.19 of 6 Dec 85 (NOTAL)
(b) Civil Service Reform Act of 1978, Public Law 95-454, 5 U.S.C. §§ 1201, 1204, 2301 and 2302
(c) Whistleblower Protection Act of 1989, Public Law 101-12, 5 U.S.C. §§ 1201, 1204, 1211-1216
(d) Office of Special Counsel Reauthorization Act of 1994, Public Law 103-424, 5 U.S.C. §§ 1204, 1211, 1212, 1214, 1218, 1221, 2105, 2302, and 4315
(e) Merit Systems Protection Board and Office of Special Counsel Implementing Regulations, 5 C.F.R. parts 1209, 1800
(f) Prohibited Personnel Practices, 5 U.S.C. § 2302
(g) Civil Service Rule V, 5 C.F.R. § 5.4
(h) The Hatch Act, 5 U.S.C. Chapter 73, Subchapter III
(i) Merit System Principles, 5 U.S.C. § 2301
(j) The Uniformed Services Employment and Reemployment Rights Act, P. L. 103-353, 38 U.S.C. §§ 4301-4333
(k) Restrictions on Dual Processing, 5 U.S.C. § 7121(d), (g); 5 C.F.R. § 1209.5(b)
(l) Privacy Act, 5 U.S.C. § 552a; SECNAVINST 5211.5D
(m) Freedom of Information Act, 5 U.S.C. § 552; SECNAVINST 5720.42F
(n) Defined Personnel Actions, 5 U.S.C. § 2302(a)(2)
(o) Cooperation With the Office of Special Counsel of the Merit Systems Protection Board, 32 C.F.R. Part 145
(p) Veteran's Preference Requirements, 10 U.S.C. § 1599c(a)

Encl: (1) Investigative Authority of the Office of Special Counsel
(2) Request for Legal Representation

1. Purpose. To implement reference (a) and supplement references (b) through (n) by prescribing procedures and assigning responsibilities for cooperation with the Office of Special Counsel (OSC) from within the Department of the Navy (DON).

2. Cancellation. SECNAVINST 12700.2.

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3. Applicability. The provisions of this instruction are applicable throughout DON unless specifically exempted by statute.

4. Summary of Changes. This instruction makes the following major changes:

a. Provides that the Senior Management Official (SMO) may withdraw representation by DON legal counsel or outside representation funded by DON where a DON civilian employee or military member subsequently obtains private counsel.

b. Assigns responsibility to the Assistant General Counsel (Manpower and Reserve Affairs) to assign DON legal representation and to withdraw or terminate DON legal representation.

c. Lists the responsibility of Activity Heads or Commanders to appoint a liaison officer.

d. Lists responsibilities of the Human Resources Directors.

5. Background

a. Authority of the OSC. The Civil Service Reform Act of 1978 (reference (b)) established the OSC under the Merit Systems Protection Board (MSPB). The OSC became an independent agency and its authority was expanded (references (c) and (d), respectively).

The OSC may investigate prohibited personnel practices (PPPs) (references (d) and (f)) on its own authority or as a result of complaints filed with the OSC and may investigate allegations of discrimination on the basis of military service under reference (j). Where individuals have alleged reprisal for whistleblowing, they may contest PPPs by filing an individual right of action (IRA) before the MSPB after having filed a complaint with the OSC (reference (e)). The authority of the OSC to investigate Navy organizations is described in enclosure (1). The procedures for requesting legal representation for DON civilian employees or military members who are the subject of a PPP investigation by OSC are described in enclosure (2).

b. Election of Forum. The following restrictions apply to filing actions with OSC (reference (k)).

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(1) Individuals who allege retaliation for whistleblowing on a personnel action otherwise appealable to the MSPB (i.e., an MSPB appeal that is authorized by statute or regulation other than reference (d)) may file either an MSPB appeal or an OSC complaint (followed by an IRA) but not both.

(2) Where the PPP may be challenged under a negotiated grievance procedure, the aggrieved individual may raise the contested personnel action under the negotiated grievance procedure or with OSC, but not both.

(3) Where no discrimination is alleged under 5 U.S.C. § 2302(b)(1), individuals in bargaining units aggrieved by a PPP may raise the contested personnel action in not more than one of the following forums:

(a) An appeal to the MSPB if the contested personnel action is otherwise appealable to the MSPB (i.e., an MSPB appeal is authorized by statute or regulation other than reference (d));

(b) The negotiated grievance procedure if the contested personnel action is grievable; or

(c) An OSC complaint (followed by an IRA if whistleblowing reprisal is alleged).

c. An election occurs when the individual seeks corrective action from the OSC for a PPP, or timely files an MSPB appeal, or a written grievance under a negotiated grievance procedure.

6. Policy. The DON will comply with the merit system principles (reference (i)), cooperate fully with the OSC's investigations of PPPs and allegations of violations of the Uniformed Services Employment and Reemployment Rights Act (USERRA) (reference (j)), and conduct internal investigations of alleged illegal or improper conduct referred to DON by the OSC.

7. Responsibilities

a. The Secretary of the Navy (SECNAV) shall advise the Special Counsel of any action taken on referrals from OSC regarding allegations of gross mismanagement, gross waste of funds, abuse of authority, and dangers to public health or safety.

b. The Office of the General Counsel of the Navy shall:

(1) Act on behalf of the SECNAV in responding to the Special Counsel except in regard to allegations of gross mismanagement, gross waste of funds, abuse of authority, and dangers to public health or safety, which are responsibilities of the Naval Inspector General (NAVINSGEN). The NAVINSGEN will coordinate with the General Counsel on matters referred for investigation by OSC.

(2) Ensure that DON legal counsel is assigned upon request to represent a DON civilian employee or military member suspected or accused by OSC of committing a PPP or an illegal or improper act when the act complained of was within the scope of the employee's or member's official responsibilities, such representation is in the interest of DON, and the employee or member does not have private counsel; or in unusual situations where the same conditions are satisfied but the use of DON counsel is inappropriate, outside legal counsel may be engaged with the personal approval of the General Counsel. The requesting employee's activity is responsible for paying the fees and expenses for any outside counsel. If the DON civilian employee or military member subsequently obtains private counsel, the SMO may withdraw representation by DON legal counsel or outside representation funded by DON.

(3) Coordinate with the Judge Advocate General (JAG) or the Staff Judge Advocate to the Commandant, as appropriate, with respect to the assignment or use of Navy or Marine Corps Judge Advocates as legal representatives for DON civilian employees and military members.

(4) Ensure that NAVINSGEN forwards to the Department of Defense copies of each allegation of improper or illegal conduct referred to the DON by the OSC, as well as copies of final reports on these allegations.

(5) Intervene, when necessary, for the purpose of representing the interests of DON in an MSPB hearing resulting from charges of misconduct against an employee of DON by OSC under the authority of references (b), (c), and (d).

(6) Make DON recommendations to the Department of Justice in regard to requests by employees for legal representation in obtaining judicial review of an MSPB order under 5 U.S.C. § 1215.

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c. The Assistant General Counsel (Manpower and Reserve Affairs). Under 32 CFR Part 145, § 145.6(b)(reference (o)), SECNAV has designated the Assistant General Counsel (Manpower and Reserve Affairs) to act as the agency's SMO in matters involving OSC investigations of prohibited personnel practices. The SMO shall:

(1) Notify Navy activities and Marine Corps commands when an allegation of a PPP has been brought to the attention of the SECNAV or the General Counsel.

(2) Notify the OSC if an investigation replicates in whole or in part an existing or completed investigation so that redundant investigative efforts can be avoided.

(3) Review for adequacy and legal sufficiency each report of an investigation into an alleged PPP to be sent to the OSC.

(4) Serve as DON point of contact in providing assistance to the OSC in conducting investigations of alleged PPPs prior to the designation of a liaison officer for the component or counsel for an individual respondent for matters in litigation.

(5) Ensure that activity and command personnel are fully apprised of the nature and basis for an OSC investigation, as well as their rights and duties in such an investigation.

(6) Monitor OSC investigations.

(7) Advise the head of the Navy activity or Marine Corps command to appoint a liaison officer to serve as a point-of-contact for any OSC investigator.

(8) Coordinate with the JAG or the Staff Judge Advocate to the Commandant, as appropriate, so that Judge Advocates may be appointed as liaison officers or as individual representatives.

(9) Exercise the authority prescribed by reference (a) by coordinating on any corrective or disciplinary action taken by the activity based on facts disclosed by an investigation or information available.

(10) Decide whether DON should agree to an OSC request for a voluntary stay of a personnel action.

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(11) Assign the DON legal representative.

(12) Decide whether to withdraw or terminate legal representation provided by DON.

d. Activity Heads or Commanders shall:

(1) Appoint a liaison officer to serve as point-of-contact for any OSC investigator.

(2) During the OSC investigation, ensure that none of the personnel actions described in reference (n) are taken with respect to the individual who filed the OSC complaint without the coordination of the SMO.

(3) Be responsible for paying the travel expenses of non-local DON counsel and shall be responsible for paying private counsel's fees and expenses.

(4) Notify the chain of command.

e. The liaison officer shall:

(1) Coordinate with the cognizant office of the General Counsel, the JAG, or the Staff Judge Advocate to the Commandant providing legal services to the activity.

(2) Assist the OSC investigator with administrative matters.

(3) Ensure all OSC requests for documents are in writing.

(4) Process all OSC requests for documents and furnish to the OSC investigator copies of releasable documents requested under references (b), (c), (d), (l), and (m).

(5) Make DON civilian employees and military members available for interviews with OSC investigators, ensure that those employees and members suspected or accused by OSC of committing a PPP or illegal or improper act are advised of their right to legal assistance during the interview, and make appropriate requests for legal assistance if such assistance is requested by a witness.

(6) Notify the SMO whenever the OSC initiates any

investigation or requests information directly from a Navy activity or Marine Corps command.

(7) Notify the SMO if an investigation replicates in whole or in part an existing or completed investigation.

(8) Notify the SMO of any corrective action proposed pursuant to recommendations by the OSC or the activity.

(9) Notify the SMO of any request by employees of the OSC that DON voluntarily stay a personnel action.

f. Human Resource Directors shall:

(1) Advise the SMO whether the individual filing the complaint with OSC has contested the same management or personnel action in the administrative or negotiated grievance process, or has filed an equal employment opportunity complaint, an appeal with the MSPB, or an unfair labor practice charge.

(2) During the OSC investigation, ensure that none of the personnel actions described in reference (n) are taken with respect to the individual who filed the OSC complaint without the coordination of the SMO.

(3) During an OSC investigation, ensure that no adverse action is taken against any employee for committing the PPP under investigation, or for any related activity, without coordinating with the SMO and receiving approval by OSC.

g. Human Resources Service Centers (HRSC) shall: Ensure the occurrence of events described above in paragraphs 7f (1)-(3) and certify the same before sending any personnel action to HRSC for processing. The HRSCs shall process only those actions certified as complying with the provisions of this instruction. Uncertified actions shall not be processed.

h. DON Civilian Employees and Military Members:

(1) Have a duty to cooperate with OSC investigators and answer questions put to them truthfully.

(2) An employee's or member's participation in OSC investigations, MSPB hearings, and other related proceedings will be considered official DON business for time and attendance

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requirements and for other similar purposes.

(3) DON civilian employees or members asked to provide information (testimonial or documentary) in the course of an OSC investigation may obtain legal advice from DON attorneys, either civilian or military, regarding that employee's or member's rights and obligations. This includes assistance at any interviews with OSC investigators. However, an attorney-client relationship shall not be established unless the General Counsel has approved the employee's or member's representation request.

(4) DON employees or members who are suspected by OSC of committing a PPP or an illegal or improper act may request legal representation from DON. The procedures for requesting representation are described in enclosure (2).

(5) Under 32 C.F.R. Part 145, Appendix (reference(o)), employees or members questioned during the course of an OSC investigation:

(a) May decline to provide a "yes" or "no" answer in favor of a more qualified answer when this is necessary to ensure accuracy in responding to an OSC interviewer's questions.

(b) May request clarification of both questions and answers to avoid misinterpretation.

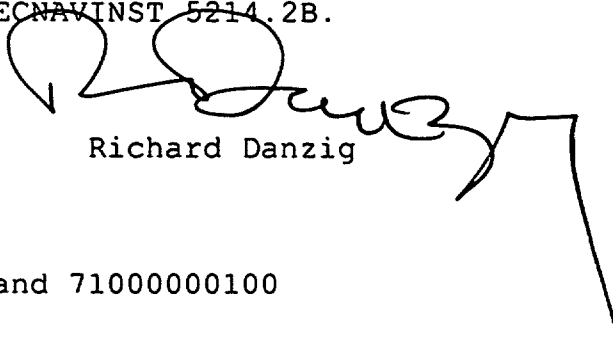
(c) May tape record their interview only when the recorder is used in full view, all attendees are informed the conversation is being recorded, and the OSC investigator agrees to the tape recording of the proceeding.

(d) Should correct any errors that appear in a written summary of an interview prepared by the interviewer before the employee signs the statement. The employee or member is not required to sign any written summary that is not completely accurate. An employee or member may make a copy of the summary for his or her own use as a condition of signing.

8. Action. The Navy activities and Marine Corps commands will implement the procedures prescribed here upon receipt of this instruction. Activities and commands shall meet their bargaining obligations with their labor unions when implementing this instruction.

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9. Reports. The reports required by this instruction are exempt from reports control by SECNAVINST 5214.2B.



Richard Danzig

Distribution:

SNDL Parts 1 and 2

MARCORPS PCN 71000000000 and 71000000100

INVESTIGATIVE AUTHORITY OF THE OFFICE OF SPECIAL COUNSEL

1. The Office of Special Counsel (OSC) is authorized to investigate allegations of Prohibited Personnel Practices, as defined at 5 U.S.C. § 2302. In the absence of any allegation, the OSC is authorized to conduct an investigation to determine whether there are reasonable grounds to believe that a PPP has occurred, exists, or is to be taken. PPPs are defined as:

a. Discrimination for or against any employee or applicant for employment on the basis of:

(1) Race, color, religion, sex, or national origin, as prohibited under section 717 of the Civil Rights Act of 1964 (42 U.S.C. § 2000e-16);

(2) Age, as prohibited under sections 12 and 15 of the Age Discrimination in Employment Act of 1967 (29 U.S.C. § 631, 633a);

(3) Sex, as prohibited under section 6(d) of the Fair Labor Standards Act of 1938 (29 U.S.C. § 206(d));

(4) Disability, as prohibited under the Rehabilitation Act of 1973 (29 U.S.C. § 791); or

(5) on the basis of marital status or political affiliation, as prohibited under any law, rule, or regulation

b. Solicitation or consideration of any recommendation or statement, oral or written, with respect to any individual who requests or is under consideration of any personnel action, except as provided under 5 U.S.C. § 3303(f);

c. Coercing the political activity of any person (including providing any political contribution or service), or taking any action against any employee or applicant for employment as a reprisal for the refusal of any person to engage in such political activity;

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d. Activity by an employee to deceive or willfully obstruct any person with respect to such person's right to compete for employment;

e. Activity by an employee to influence any person to withdraw from competition for any position for the purpose of improving or injuring the prospects of any other person for employment.

f. Granting any preference or advantage not authorized by law, rule, or regulation to any employee or applicant for employment (including defining the scope or manner of competition or the requirements for any position) for the purpose of improving or injuring the prospects of any particular person for employment.

g. Appointing, employing, promoting, advancing, or advocating for appointment, employment, promotion, or advancement, in or to a civilian position any individual who is a relative (as defined in 5 U.S.C. § 3110) or over which the employee exercises jurisdiction or control as an official.

h. To take or fail to take, or threaten to take or fail to take, a personnel action with respect to any employee or applicant for employment because of:

(1) any disclosure of information by an employee or applicant which the employee or applicant reasonably believes evidences a violation of any law, rule, or regulation, or a gross mismanagement, a gross waste of funds, an abuse of authority, of a substantial and specific danger to public health or safety, if such disclosure is not specifically prohibited by law and if such information is not specifically required by Executive Order to be kept secret in the interest of national defense or the conduct of foreign affairs; or

(2) any disclosure to the Special Counsel, or to the Inspector General of an agency or another employee designated by

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the head of the agency to receive such disclosures, of information which the employee or applicant reasonably believes evidences a violation of any law, rule, or regulation, or gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety;

i. Taking or failing to take, or threatening to take, any personnel action against any employee or applicant for employment because of the exercise of any appeal, complaint, or grievance right granted by any law, rule, or regulation; testifying for or otherwise lawfully assisting any individual in the exercise of any right referred to in 5 U.S.C. § 2302(b)(9)(A); cooperating with or disclosing information to the Inspector General of an agency, or the Special Counsel, following applicable provisions of law; or for refusing to obey an order that would require the individual to violate a law;

j. Discriminating for or against any employee or applicant for employment on the basis of conduct which does not adversely affect the performance of the employee or applicant or the performance of others; except that nothing in this paragraph shall prohibit an agency from taking into account in determining suitability or fitness any conviction of the employee or applicant for any crime under the laws of any State, of the District of Columbia; or of the United States;

k. Taking or failing to take any other personnel action if the taking of or failure to take such action violates any law, rule, or regulation implementing, or directly concerning, the merit system principles contained in 5 U.S.C. § 2301.

1. Take or fail to take, recommend, or approve a personnel action if taking or failing to take such an action would violate a veteran's preference requirement.

2. Under 5 U.S.C. § 1216 (reference c)), the OSC also investigates allegations concerning:

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a. Political activity by Federal employees prohibited by the Hatch Act, (reference h)).

b. Arbitrary or capricious withholding of information prohibited by the Freedom of Information Act (reference (m))

c. Activities prohibited by any civil service law, rule or regulation, including partisan political intrusion in personnel decision making.

d. Involvement by any employee in any prohibited discrimination found by any court or appropriate administrative authority to have occurred in the course of any personnel action, except when the OSC determines that such allegations may be resolved more appropriately under an administrative appeals procedure.

e. The denial of employment benefits or reemployment rights to veterans or reservists.

3. The OSC may refer whistleblowing disclosures to the concerned agency and require the agency to inform the OSC of what action has been or is to be taken.

4. If after investigation, the OSC determines that there is reasonable cause to believe that any violation of law, rule or regulation has occurred which shows gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety, the OSC must report the violation to the agency. The OSC may require the head of the agency to conduct an investigation and personally review the report and certify what action has been, or is to be taken, within 60 days after the date on which the information is transmitted to the head of the agency, or within any longer period of time agreed to in writing by the Special Counsel.

5. The OSC may, after conducting an investigation and determining that there are reasonable grounds to believe that a

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prohibited personnel practice has occurred, make recommendations to the agency as to what corrective action should be taken.

6. The OSC may approve, during an investigation, an agency's request to take adverse action against an employee for any alleged prohibited activity under investigation or for any related activity.

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REQUEST FOR LEGAL REPRESENTATION

1. A civilian employee or military member of the Department of the Navy (DON) asked to provide information (testimonial or documentary) to the Office of Special Counsel (OSC) in the course of an investigation by that office may obtain legal advice from DON attorneys, both civilian and military, regarding that employee's or member's rights and obligations. This includes assistance at any interviews with OSC investigators. However, the attorney-client relationship shall not be established unless the employee or member is suspected or accused by the OSC of committing a prohibited personnel practice or an illegal or improper act and has been assigned DON counsel.

2. A civilian employee or military member who believes he or she is suspected or has been accused by the OSC of committing a prohibited personnel practice, may request legal representation from the DON, except as provided in paragraph 6 of this enclosure. Outside legal counsel may be retained by the DON on behalf of the employee or member only under unusual circumstances and only with the personal approval of the General Counsel of the Navy.

3. To obtain legal representation the civilian employee or military member must:

a. Request legal representation, in writing, together with all process and pleadings served on the employee or member and explain the circumstances that justify legal assistance.

b. Indicate whether he or she has retained legal counsel.

c. Obtain from his or her supervisor an endorsement, in writing, that the employee or member was acting within the scope of his or her official duties, that such representation is in the interest of the DON, and that no adverse or disciplinary personnel action against the employee or member for the conduct being investigated by the OSC has been initiated by activity management.

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d. Forward such request to the Senior Management Official (SMO) via the designated liaison officer.

4. Legal representation may not be provided until and unless the SMO approves an employee or member's request.

5. The conditions of legal representation must be explained to the accused employee or member in writing and accepted, in writing, by that employee or member.

6. DON resources may not be used, with respect to a DON disciplinary action, to provide legal representation for a civilian employee or military member when the employee or member is accused of committing or participating in a PPP or for engaging in illegal or improper conduct, regardless of whether that participation or conduct is also the basis for the disciplinary action proposed by the OSC.

7. After approval under paragraph 4 of a request for representation, a DON attorney shall be assigned (or, in unusual circumstances, outside counsel retained) as the employee's or member's representative in matters pending before the OSC or Merit Systems Protection Board (MSPB). This approval may be limited to representing the employee or member only with respect to some of the pending matters if other specific matters of concern to the OSC or MSPB do not satisfy the requirements of this enclosure.

8. An attorney-client relationship will be established and continued between the suspected or accused employee and member and assigned DON counsel.

9. In representing a DON employee or member under this SECNAV instruction, a DON attorney designated as counsel shall act as a vigorous advocate of the employee's or member's individual legal interests before the OSC or MSPB, and the attorney's professional responsibility to the DON and his or her employing activity will be satisfied by fulfilling this responsibility to the employee or member. The assigned counsel will be allowed adequate official time to properly represent his or her client.

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Legal representation may be terminated only with the approval of the SMO, and normally only on the basis of information not available at the time the attorney was assigned.

10. The attorney-client relationship may be terminated if the assigned DON counsel for the employee or member determines, with the approval of the SMO:

a. That the employee or member was acting outside the scope of his or her official duties when engaging in the conduct that is the basis for the OSC investigation or charge of a prohibited personnel practice.

b. That the termination of the professional representation is not in violation of the rules of professional conduct applicable to the assigned counsel.

11. The DON attorney designated as counsel may request relief from the duties of representation or counseling without being required to furnish explanatory information that might compromise the assurance to the client of confidentiality.

12. This instruction authorizes cognizant DON officials to approve requests for travel, per diem, witness appearances, or other support necessary to ensure effective legal representation of the employee or member.

13. An employee's or member's participation in OSC investigations, MSPB hearings, and other related proceedings will be considered official DON business for time and attendance requirements and for other similar purposes.

Enclosure (2)

SECNAVINST 12700.2A

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SAMPLE
REQUEST FOR REPRESENTATION

I, _____, declare under penalty of perjury the following is true to the best of my knowledge and belief:

I am employed by the Department of the Navy as an _____ and have served in this capacity since _____.

I am advised that I am the subject of an investigation that will be conducted by the Office of Special Counsel from (dates) under 5 U.S.C. Section 1201 et seq. As I understand the facts and circumstances surrounding this investigation, _____ (GIVE A DETAILED EXPLANATION OF WHAT'S KNOWN ABOUT THE ALLEGATIONS BEING INVESTIGATED). Copies of all pleadings served on me are attached to this declaration.

I certify that all my actions in connection with matters arising under the investigation described above were proper and within the scope of my duties as an _____ with _____ (NAME OF ACTIVITY OR ORGANIZATION).

I have not committed or participated in a prohibited personnel practice, nor have I engaged in any illegal or improper conduct. To the best of my knowledge, I am not the subject of any agency disciplinary action arising from the facts and circumstances surrounding this investigation.

I hereby request that the Department of the Navy (DON) Office of General Counsel (OGC) appoint an attorney to represent me in the investigation described above. I certify that I have not retained legal counsel from outside the Department of Defense to assist me in this investigation.

I understand that, if DON OGC affords me representation, an attorney-client relationship will be established and continued

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between me and the attorney assigned to represent me. I understand the attorney assigned to me shall be my representative only for the matter under investigation by the Office of Special Counsel.

I understand that I may terminate the attorney-client relationship with my assigned attorney for any reason. I understand that if I terminate the attorney-client relationship with my assigned attorney, the Department of the Navy Office of General Counsel has no obligation to assign another attorney to assist me in the investigation.

I understand that, if the Department of the Navy Office of General Counsel affords me representation, the attorney assigned to represent me may terminate the attorney-client relationship, after obtaining approval from the General Counsel authorizing representation, if my attorney determines: (a) that I was acting outside the scope of my official duties when engaging in the conduct that is the basis for the Office of Special Counsel investigation or charge; and (b) termination of the professional representation is not in violation of the rules of professional conduct applicable to my attorney. I understand that, if my attorney asks the Navy General Counsel who authorized representation to be relieved from representing me in the investigation, he or she may do so without being required to give information that might divulge anything I told him or her in confidence.

DATED this ____ day of _____, at _____

SIGNATURE OF DECLARANT

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SAMPLE
DECLARATION OF SUPERVISOR

I, _____, declare under penalty of perjury the following is true to the best of my knowledge and belief:

I am employed by the Department of the Navy as an _____ and have served in this capacity since _____. I am _____'s immediate supervisor.

I am familiar with the facts and circumstances that form the basis for the Office of Special Counsel investigation into _____'s actions and am aware that he/she is the subject of that investigation.

I certify that all of _____'s actions in connection with the Office of Special Counsel's investigation into _____ (DESCRIBE WHAT'S BEING INVESTIGATED) were within the scope of _____'s official duties.

The agency has not initiated any disciplinary action against _____ based on the matters under investigation by the Office of Special Counsel.

I recommend that the Department of the Navy Office of General Counsel appoint an attorney to represent _____ during the Office of Special Counsel investigation. Such representation is in the interest of the Department of the Navy.

DATED this _____ day of _____, at _____.

SIGNATURE OF SUPERVISOR

Enclosure (2)